

Unreimbursed Employee Job Expenses and the Suspension of the Miscellaneous Itemized Deduction

May 17, 2019

Before the 2018 tax year, employees who incurred certain unreimbursed job-related expenses were allowed to claim a deduction for the amount of those expenses above 2% of a taxpayer's adjusted gross income (AGI), under Sections 62 and 67 of the federal tax code. (The deduction also applied to certain costs related to the production or collection of income, and to the management, conservation, or maintenance of property held for producing such income, but they are not addressed here.) [Guidance](#) issued by the Internal Revenue Service (IRS) for this itemized miscellaneous deduction identified the unreimbursed expenses that qualified for the deduction. They included

- an employee's bad debt from a loss created or acquired in her/his trade or business;
- premiums paid by an employee for insurance against personal liability for wrongful acts on the job;
- damages paid to a former employer for breach of an employment contract;
- depreciation for a computer used by an employee in her/his work for the convenience of their employer and because the job requires use of a computer;
- dues paid to professional societies, local chambers of commerce, and similar organizations if membership helps an employee perform her/his job better;
- ordinary and necessary classroom expenses (above \$250 for a single filer and \$500 for a joint filer) incurred by a kindergarten-through-grade-12 teacher, instructor, counselor, principal, or aide;
- home office expenses for the space in an employee's home used exclusively and regularly in his/her work, for the convenience of her/his employer;
- certain expenses an employee incurs in searching for a new job in her/his current occupation;
- license and regulatory fees paid to state or local governments for one's profession or business;

Congressional Research Service

<https://crsreports.congress.gov>

IN11119

- legal fees related to doing or keeping one's job;
- malpractice insurance premiums;
- employee medical examinations;
- taxes charged at a flat rate by a local government for the privilege of working or conducting a business in a particular location;
- passport fees for business trips;
- repayment of a lump-sum income aid payment received under an employer's plan to assist employees who lose their jobs because of a lack of work;
- qualified research costs of a college professor;
- rural mail carriers' motor vehicle costs in excess of reimbursements;
- subscription fees for professional journals and trade magazines related to an employee's work;
- cost of travel, transportation, meals, entertainment, gifts, and local lodging tied to an employee's temporary work assignments;
- tools and supplies used in an employee's work and discarded within one year of purchasing them;
- union dues, initiation fees, and assessments for benefit payments to unemployed union members;
- work clothes and uniforms, provided they are not suitable for everyday use and must be worn in one's job; and
- work-related education intended to improve or maintain an employee's job skills, or to satisfy an employer's requirement (or legal requirement) to retain one's salary, status, or job.

The 2017 tax revision (P.L. 115-97, also known as the Tax Cuts and Jobs Act, or TCJA), eliminated the miscellaneous itemized deduction for the 2018 to 2025 tax years. A primary reason for the suspension was to raise revenue to offset the revenue loss from other provisions in the law, such as the cuts in the corporate and individual income tax rates. According to an estimate by the Joint Committee on Taxation, the suspension of the deduction will result in a cumulative revenue gain of \$668.4 billion from FY2018 to FY2027. The loss of the deduction means that taxpayers with eligible unreimbursed job expenses could face an increase in their tax burden equal to their marginal income tax rate multiplied by the amount of those expenses in a tax year.

Such an increase could be avoided under certain circumstances. First, Congress could pass a law that restores the deduction. For example, identical bills (H.R. 2103 and S. 1026) introduced in the House and Senate would establish a miscellaneous itemized deduction for workers with unreimbursed expenses "incurred in the trade or business of being an employee," for tax years beginning on or after January 1, 2019.

Second, a worker with such expenses could become an independent contractor, in which case the expenses could be deducted as ordinary and necessary business expenses. Independent contractors are self-employed individuals who earn business income, not wage income. They are required to pay a self-employment tax of 15.3% on taxable income, making it a key consideration in deciding whether one is better off financially switching from an employee to an independent contractor. To become an independent contractor, someone has to satisfy a list of criteria established and enforced by the [Internal Revenue Service](#). Another potential tax advantage of earning income as an independent contractor is that self-employed persons may benefit from a deduction (§199A) created by the 2017 tax revision that could equal up to 20% of a noncorporate business owner's qualified business income in the current tax year (for

more details, see CRS In Focus IF11122, *2019 Tax Filing Season (2018 Tax Year): Section 199A Deduction for Passthrough Business Income*).

Third, an employee with unreimbursed work expenses could try to convince her/his employer to pay for them now that those expenses are not deductible from 2018 to 2025. Perhaps the best option for an employee would be to be reimbursed under an [employer's accountable reimbursement plan](#). Expenses paid or incurred by an employee in connection with her/his job are generally deductible in calculating AGI to the extent the expenses are reimbursed under such a plan. An employee has to submit receipts for expenses and repay any advances that exceed the substantiated expenses. Reimbursements made under such a plan are excluded from an employee's gross income, are not reported as wages or compensation on the employee's Form W-2, and are not subject to withholding or employment taxes.

Author Information

Gary Guenther
Analyst in Public Finance

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.